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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224436
Party	Defendant Sharon Wilson
Correspondence Address	THOMAS L MOSES SOUTHEAST IP GROUP LLC PO BOX 14156 GREENVILLE, SC 29601-2734 UNITED STATES tmoses@seiplaw.com, khardin@seiplaw.com
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Date	05/19/2016
Attachments	Answer.pdf(39553 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Joan Herlong,

Opposer,

v.

Sharon Wilson,

Applicant.

Opposition No.: 91224436

**ANSWER**

In response to the Amended Notice of Opposition filed by Opposer in the above-reference Opposition proceeding, Applicant answers as follows:

In response to the sequential paragraphs of the Notice of Opposition, Applicant states:

1. Applicant is without knowledge or information sufficient to form a belief about the truth of the allegations contained therein and accordingly denies the allegations thereof.
2. Applicant is without knowledge or information sufficient to form a belief about the truth of the allegations contained therein and accordingly denies the allegations thereof.
3. Applicant admits the allegations thereof.
4. Applicant admits the allegations thereof.
5. Applicant admits the allegation thereof.
6. Applicant denies the allegation thereof.
7. Applicant denies the allegation thereof.
8.
  - a. Applicant is without knowledge or information sufficient to form a belief about the truth of the allegation contained therein and accordingly denies the allegation.
  - b. Applicant is without knowledge or information sufficient to form a belief about the truth of the allegation contained therein and accordingly denies the allegation.

- c. Applicant is without knowledge or information sufficient to form a belief about the truth of the allegation contained therein and accordingly denies the allegation.
- d. Applicant is without knowledge or information sufficient to form a belief about the truth of the allegation contained therein and accordingly denies the allegation.
- e. Applicant is without knowledge or information sufficient to form a belief about the truth of the allegation contained therein and accordingly denies the allegation.
- f. Applicant is without knowledge or information sufficient to form a belief about the truth of the allegation contained therein and accordingly denies the allegation.
- g. Applicant is without knowledge or information sufficient to form a belief about the truth of the allegation contained therein and accordingly denies the allegation.

Applicant denies the remaining allegations of this paragraph.

- 9. Applicant denies the allegation thereof.
- 10. Applicant denies the allegation thereof.
- 11. Applicant denies the allegation thereof.
- 12. Applicant denies the allegation thereof.
- 13. Applicant denies the allegation thereof.
- 14. Applicant denies the allegation thereof.
- 15. Applicant denies the allegation thereof.
- 16.

- a. Applicant admits that Opposer has submitted Exhibit A. However, Applicant is without knowledge or information sufficient to form a belief about the truth of the facts and allegations set forth therein and accordingly denies the same.
- b. Applicant admits that Opposer has submitted Exhibit B. However, Applicant is without knowledge or information sufficient to form a belief about the truth of the facts and allegations set forth therein and accordingly denies the same.

- c. Applicant admits that Opposer has submitted Exhibit C. However, Applicant is without knowledge or information sufficient to form a belief about the truth of the facts and allegations set forth therein and accordingly denies the same.
  - d. Applicant is without knowledge or information sufficient to form a belief about the truth of the allegation contained therein and accordingly denies the allegation.
17. Applicant denies the allegation thereof.
18. Applicant denies the allegation thereof.

Applicant further denies all allegations not specifically, actually, or constructively, admitted in the foregoing paragraphs of this Answer.

#### **AFFIRMATIVE DEFENSES**

1. Applicant has been using the NUMBER ONE IN THE NEIGHBORHOOD service mark for her real estate services for over 10 years, beginning in 2005. The South Carolina Secretary of State, in its examination of Applicant's currently enforceable state service mark, that registered on August 19, 2011, for "Number One in the Neighborhood" for Real Estate Sales in class #8, pursuant to the provisions of the South Carolina Code of Laws Section 39-15-1105 et seq., did not find the mark contained deceptive matter or was deceptively misdescriptive and would not have registered the mark if it had.
2. Applicant's mark, NUMBER ONE IN THE NEIGHBORHOOD, does not disclose, specify, suggest, or imply any metric, measure, or circumstances for which the Applicant's services or a portion thereof are number one, and thus is not capable of being proven demonstrably true or even misleading.
3. Applicant's mark, NUMBER ONE IN THE NEIGHBORHOOD, does not disclose, specify, suggest, or imply any person, organization, or entity that has rated or currently rates or ranks Applicant's services or a portion thereof are number one, and thus is not capable of being proven demonstrably true or even misleading.
4. Applicant's mark, NUMBER ONE IN THE NEIGHBORHOOD, does not disclose, specify, suggest, or imply any particular neighborhood wherein the Applicant's services or a portion thereof are number one, and thus is not capable of being proven demonstrably true or even misleading.

5. Applicant's mark, NUMBER ONE IN THE NEIGHBORHOOD, does not create a false impression and is no more likely to create a false impression amongst anyone than someone claiming they are or have the number one dad or number one fan.

6. Many other real estate agencies, agents, and companies across the country routinely use similar marks which incorporate NUMBER ONE and have not been considered deceptive or deceptively misdescriptive. For Example:

<u>Mark</u>	<u>USPTO Reg. No.</u>
AMERICA'S #1 KWIK HOME BUYER! 1-800-BUY-KWIK	4644608
#1 (stylized)	3218900
WWW.NUMBER 1 HOME SALES.COM	78897307
1 NUMBER1 EXPERT	3539294
PUT NUMBER 1 TO WORK FOR YOU	1367039
WHEN YOU'RE #1, YOU CAN DO THINGS OTHERS CAN'T	2037300

WHEREFORE, the application for registration should be passed to registration, and this opposition should be dismissed.

May 18, 2016

Respectfully submitted,

/s/Thomas L. Moses

Thomas L. Moses  
Registration No. 39,781  
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P.O. Box 14156  
Greenville, SC 29611

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ATTORNEY FOR APPLICANT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Applicant's Answer has been served on opposing counsel by mailing said copy on May 18, 2016, via First Class Mail, postage prepaid to:

Timothy D. St. Clair  
Nexsen Pruet, LLC  
55 East Camperdown Way, Suit 400  
Greenville, SC 26901

May 18, 2016

/s/Thomas L. Moses  
Thomas L. Moses  
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